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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**GOOGLE LLC'S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF
GOOGLE'S OPPOSITION TO
PLAINTIFFS' MOTION TO EXCLUDE
PORTIONS OF THE REBUTTAL
REPORT OF KONSTANTINOS PSOUNIS
(DKT. 703)**

Judge: Hon. Yvonne Gonzalez Rogers

Case No. 4:20-cv-03664-YGR-SVK

GOOGLE LLC'S ADMIN MOTION TO SEAL PORTIONS OF OPPOSITION TO PLAINTIFFS' MOTION TO
EXCLUDE PORTIONS OF THE REBUTTAL EXPERT REPORT OF KONSTANTINOS PSOUNIS

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully seeks to seal certain portions of Google’s Opposition to Plaintiffs’ Motion to Exclude Portions of the Rebuttal Report of Konstantinos Psounis (Dkt. 703) (“Google’s Opposition”), which contains non-public, highly sensitive and confidential business information that could affect Google’s competitive standing and may expose Google to increased security risks if publicly disclosed, including various types of Google’s internal projects, data sources, and their proprietary functionalities, as well as internal metrics. This information is highly confidential and should be protected.

This administrative motion pertains to the following information contained in Google’s Opposition:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Google’s Opposition to Plaintiffs’ Motion to Exclude Portions of the Rebuttal Report of Konstantinos Psounis (Dkt. 703)	Highlighted Portions at: 1:25, 2:17-18, 4:3, 5:14, 6:9, 9:4, 9:28, 13:9, 13:12	Google
Exhibit 1 to Ansoerge Declaration (Excerpts of 7/21/22 Hochman Deposition)	Highlighted Portions at: 474:11-14, 474:16, 474:18, 474:22, 475:6	Google
Exhibit 2 to Ansoerge Declaration (Excerpts of 4/29/21 Hearing Transcript)	Highlighted Portions at: 9:22	Google
Exhibit 3 to Ansoerge Declaration (Excerpts of 7/20/22 Hochman Deposition)	Highlighted Portions at: 92:11-12, 93:7, 93:9, 116:10	Google

II. LEGAL STANDARD

A party seeking to seal material must “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is

1 “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing
2 only of sealable material.” *Id.*

3 In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a
4 showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty.*
5 *Of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information
6 in a non-dispositive motion must show only “good cause.” *Id.* at 1179-80. The rationale for the
7 lower standard with respect to non-dispositive motions is that “the public has less of a need for
8 access to court records attached only to non-dispositive motions because these documents are often
9 unrelated, or only tangentially related, to the underlying cause of action” and that as a result “[t]he
10 public policies that support the right of access to dispositive motions, and related materials, do not
11 apply with equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM,*
12 *LLC v. McAfee, Inc.*, 2015 WL 5116721, at *1 (N.D. Cal. Aug. 28, 2015) (“Records attached to
13 nondispositive motions are not subject to the strong presumption of access.”) (citation omitted).
14 Under the “good cause” standard, courts will seal statements reporting on a company’s users, sales,
15 investments, or other information that is ordinarily kept secret for competitive purposes. *See*
16 *Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at *1 (S.D. Cal. Mar. 24, 2014); *Nitride*
17 *Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at *1 (N.D. Cal. Aug. 1, 2018) (granting
18 motion to seal “[c]onfidential and proprietary information regarding [Defendant]’s products” under
19 “good cause” standard) (Van Keulen, J.).

20 Courts in this District have held that motions to exclude the testimony of experts are
21 nondispositive. *TVIIM, LLC v. McAfee, Inc.*, 2015 WL 3623656, at *4 (N.D. Cal. June 10, 2015)
22 (“Because Plaintiff’s motion to exclude testimony is not a dispositive motion, the Court applies the
23 “good cause” standard.”).

24 **III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED**

25 Although the materials that Google seeks to seal here easily meet the higher “compelling
26 reasons” standard, the Court need only consider whether these materials meet the lower “good
27 cause” standard. Courts have repeatedly found it appropriate to seal documents that contain
28 “business information that might harm a litigant’s competitive standing.” *Nixon*, 435 U.S. at 589-

99. Good cause to seal is shown when a party seeks to seal materials that “contain[] confidential information about the operation of [the party’s] products and that public disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg. of Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s competitive standing may be sealed even under the “compelling reasons” standard. *See e.g., Williams v. Apple, Inc.*, 2021 WL 2476916, at *3 (N.D. Cal. June 17, 2021) (finding “public disclosure of key metrics . . . would harm [defendant’s] competitive standing” and therefore is appropriate for sealing); *Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’ standard where that information could be used to the company’s competitive disadvantage”) (citation omitted).

Here, the good cause standard is satisfied. Google’s Opposition and Exhibits 1-3 of the Ansorge Declaration, all comprise confidential and proprietary information as the materials involve highly sensitive features of Google’s internal systems and operations that Google does not share publicly. Specifically, this information provides confidential details related to Google’s metrics, projects and their proprietary functions. Such information reveals Google’s internal strategies, system designs, and business practices for operating and maintaining many of its important services while complying with legal and privacy obligations.

Public disclosure of the above-listed information would harm Google’s competitive standing it has earned through years of innovation and careful deliberation, by revealing sensitive aspects of Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain sensitive business information related to Google’s processes and policies to ensure the integrity and security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because “disclosure would harm their competitive standing by giving competitors insight they do not have”); *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting

1 motion to seal as to “internal research results that disclose statistical coding that is not publicly
2 available”).

3 Moreover, if publicly disclosed, malicious actors may use such information to seek to
4 compromise Google’s data logging infrastructure. Google would be placed at an increased risk of
5 cyber security threats. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal.
6 Sept. 25, 2013) (sealing “material concern[ing] how users’ interactions with the Gmail system
7 affects how messages are transmitted” because if made public, it “could lead to a breach in the
8 security of the Gmail system”). The security threat is an additional reason for this Court to seal the
9 identified information.

10 The information Google seeks to redact is the minimal amount of information needed to
11 protect its internal systems and operations from being exposed to not only its competitors but also
12 to nefarious actors who may improperly seek access to and disrupt these systems and operations.
13 The “good cause” rather than the “compelling reasons” standard should apply but under either
14 standard, Google’s sealing request is warranted.

15 **IV. CONCLUSION**

16 For the foregoing reasons, Google respectfully requests that the Court seal the identified
17 portions of Google’s Opposition.

18
19 DATED: September 14, 2022

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